

**DECISION**

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

74153

**FILE:** B-209511

**DATE:** January 28, 1983

**MATTER OF:** BVR, Inc.

**DIGEST:**

1. The nonresponsiveness of an alternate offer does not render nonresponsive the basic bid submitted in conformance with specifications.
2. Where the protester complains a bidder is not eligible for waiver of first article requirements and the bidder is low regardless of its eligibility for waiver, the protest is academic since the matter will not determine the eventual contractor.

BVR, Inc. protests any award to the low bidder, Aeronetics Division of AAR Corporation, under Army invitation for bids (IFB) No. DAAB07-82-B-F112. The Army Communications-Electronics Command issued the IFB to procure heading indicators for use in piloting aircraft. The IFB required the indicators to meet Government specifications for a model "ID-1351( )/A." (The designation permits the bidder to supply any of several modifications of model 1351 indicators which meet the specifications.) The IFB also required first article testing and approval, for which the bidder was to submit a separate line-item price. The IFB reserved the Government's right to waive the first article testing requirement, however, upon the bidder's submission of "evidence that prior Government acceptance or approval is applicable to the product(s) proposed to be furnished \* \* \*."

Aeronetics submitted a bid with separate prices for the indicators and first article testing, and included a letter headed, "WAIVER OF FIRST ARTICLE," which stated:

024509

"As an alternate to the attached solicitation \* \* \*, Aeronetics also offers the ID-1351(D)/A [an earlier modified version] as an approved and accepted item to be considered for waiver of First Article and First Article Test."

With or without waiver, Aeronetics' price is lower than any other bidder's. BVR, which submitted the second low bid price on the basis of waiver of the first article requirement, contends that the ID-1351(D)/A does not meet certain mandatory specifications, and that Aeronetics' letter renders its bid ambiguous as to whether it offers to comply with the specifications. Thus, BVR argues, Aeronetics' bid should be found nonresponsive and unacceptable. We deny this aspect of the protest. The protester also argues that even if the bid is acceptable, Aeronetics does not qualify for waiver. We dismiss this aspect of the protest.

It is unclear whether the ID-1351(D)/A meets the invitation's requirements because the agency did not address this question in its report on the protest. Even if the ID-1351(D)/A does not meet the specifications, however, the letter's reference to the nonconforming modification does not render Aeronetics' bid nonresponsive.

While Aeronetics' letter submitted with its bid must be considered part of the bid, see Free-Flow Packaging Corporation, B-204482, February 23, 1982, 82-1 CPD 162, the letter certainly does not render the basic bid ambiguous, even though the letter itself may be ambiguous. The Army suggests that Aeronetics' letter merely recommends that the Army consider Aeronetics' experience in having produced the ID-1351(D)/A as a basis for waiving first article requirements for the ID-1351( )/A. We believe the letter, when considered with the basic bid, also may be interpreted as offering an alternate proposal to provide model ID-1351(D)/A indicators for which Aeronetics desired waiver of the first article requirements.

Aeronetics' bid is responsive under either interpretation. Under the first interpretation, the letter involves the bidder's qualification for waiver, which does not affect the responsiveness of the bid. The basic bid itself offered the specified indicators on the basis of both first article requirements and waiver of those requirements. Information bearing on eligibility for waiver relates to the bidder's responsibility, or ability to perform the contract

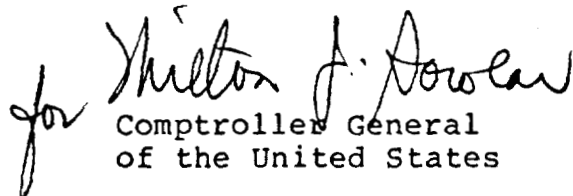
on the basis of waiver of first article requirements.  
Bruno-New York Industries Corp., 59 Comp. Gen. 512 (1980),  
80-1 CPD 388.

If the letter is interpreted as the offer of an alternative to the ID-1351( )/A, the alternative offer would be nonresponsive since the "D" version indicators presumably differ from those described in the IFB specifications. The test of responsiveness is whether the bidder unequivocally offers in the bid to provide the requested items in total conformance with the invitation's requirements. Free-Flow Packaging Corporation, supra.

The nonresponsiveness of Aeronetics' alternative offer, however, would not affect its conforming bid. Our Office consistently has held that the inclusion of a nonresponsive alternative offer does not preclude the consideration of other offers which conform to the IFB's requirements. See Teledyne Republic, B-204022, December 31, 1981, 81-2 CPD 520; Fiesta Corporation, B-199821, November 3, 1980, 80-2 CPD 335. BVR does not allege that Aeronetics' bid is nonresponsive for any reason aside from the letter. The Army therefore may consider Aeronetics' basic bid for the ID-1351( )/A indicators.

BVR does argue, however, that Aeronetics' bid, which included a price if first article approval is waived (\$533,407) and a price if approval is required (\$567,232), cannot qualify for first article waiver as submitted. Since BVR's bids (\$619,131 without first article approval, \$638,482 with) were higher than Aeronetics' bid even without waiver, the resolution of this matter will not determine the eventual contractor, and therefore is academic.

The protest is dismissed in part and denied in part.

for   
Comptroller General  
of the United States